



July 20, 1999

Mr. Kevin McCalla
Director, General Law Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-2034

Dear Mr. McCalla:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127831.

The Natural Resource Conservation Commission (the "commission") received a request for the complete file concerning job posting number 98496. You assert that the requested file is protected from disclosure under section 552.103(a) of the Government Code pursuant to Open Records Letter No. 98-2776 (1998).

You explain that the requested information was the subject of the prior ruling, Open Records Letter No. 98-2776. You have released the job requirements and the posting for the position, but withheld the remainder in accordance with our prior ruling. You seek to continue to withhold the remainder of the requested information because, with some exceptions, the fact situation remains the same as in the prior ruling.

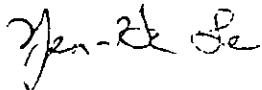
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). This office has stated that a pending Equal Employment Opportunity Commission ("EEOC") complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). In the prior ruling, you that shown that litigation is reasonably anticipated because complaints filed with the EEOC and the Texas Commission on Human Rights ("TCHR") were pending. In the present instance, you inform us that the complaints are no longer pending. The commission received the EEOC's determination of the complaint on June 1, 1999. You explain that the charging party has ninety days from the

date of receipt of the determination to file a civil action; this deadline has not yet passed. Additionally, the commission received a second charge of discrimination and retaliation that was filed with the TCHR. The commission received notification of the TCHR's dismissal of the complaint on May 27, 1999. The charging party has sixty days from the date of receipt of the notice to file a civil lawsuit in state court and ninety days to file a lawsuit in federal court. The deadlines for these actions have not yet passed. Although no suits have been filed yet, as the requestor avers, we conclude that, until the deadlines have passed, the commission reasonably anticipates litigation on these complaints and charges. Moreover, in accordance with the prior ruling, we conclude that the remainder of the requested records is related to the anticipated litigation concerning the discrimination complaints. Thus, you may continue to withhold the remainder of the requested information under section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact this office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 127831

cc: Ms. Deirdre C. Moss
9628 Copper Creek Drive
Austin, Texas 78729